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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/527,986	03/17/2000	Robert Giannini	JARB.005PA	4342
7590	12/16/2003		EXAMINER	
Crawford PLLC 1270 Northland Drive Suite 390 St Paul, MN 55120			GART, MATTHEW S	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/527,986	GIANNINI, ROBERT
Examiner	Art Unit	
Matthew s Gart	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 07 October 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-10 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 17 March 2000 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10. 6)  Other: \_\_\_\_\_ .

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

### **Election/Restrictions**

Claims 1-10 are pending in the instant application. New claims 11-20 were added via Paper No. 15. Newly submitted claims 11-20 are directed to an invention that is independent or distinct from the invention originally claimed for the following reason. New claims 11-20 disclose electronically exchanging the commercial articles for at least one other article selected by the recipient. New claims 11-20 have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 11-20 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Drawings***

This application has been filed with informal drawings, which are acceptable for examination purposes only. Figures 1 and 2 contain rough lines and text, which may affect clarity when reproduced.

Applicant is required to submit a formal correction of the noted defect. Applicant is required to submit drawing corrections promptly. Drawing objections may no longer be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-7 and 9-10 are rejected under 35 U.S.C. 103(a) as being anticipated by Rom U.S. Patent No. 6,307,568 in view of Dodd U.S. Patent No. 6,321,211.**

Referring to claims 1, 4, 5, 6, 9, and 10. Rom discloses a method and an arrangement for on-line viewing of an article on another structure (at least Abstract), comprising:

- Providing a host-site accessible to an on-line viewer (column 4, lines 30-44, “A garment-fitting system 14, for fitting garments over the Internet, receives a number of different inputs.”) web-accessible at a separate site and web-linkable to at least one article-provider site (column 6, lines 24-32, “In step 1, the user sends a picture of the body of the user to the vendor of

garments over the Internet.") the article provider-site having images of articles for view via the web (Figure 1, Garment picture);

- Linking the on-line viewer to the host-site and selecting a structure in response to a command received by the on-line viewer (Figure 2 and Figure 3);
- Using the host-site, linking the viewer to the at least one article-provider site and passing images from that site for view by the on-line viewer (Figure 2 and Figure 3);
- A memory containing a new image of a merged item composed of merged representations of the different ones of the articles and the structure (Figure 3, step 4);
- At the host-site, electronically storing partial-data sets respectively corresponding to different ones of the articles (column 3, lines 62-65); and
- Generating a new image by merging representations of the different ones of the articles with the structure by forming an image of a merged item including representations of both the structure and the selected article (Figure 2, Figure 3 and column 2, lines 3-9).

Rose does not expressly disclose a method and an arrangement for on-line viewing of an article on another structure, comprising:

- Communicating the item electronically to another site for a selection, which causes a billing to another site; and
- Electronically gifting the merged item to another site (at least abstract).

Dodd discloses a method and an arrangement for on-line viewing of an article on another structure (at least Abstract), comprising:

- Communicating the item electronically to another site for a selection, which causes a billing to another site (at least column 3, lines 28-50 and column 9, lines 49-67); and
- Electronically gifting the merged item to another site (at least abstract).

The Examiner notes, the virtual storage closet in the instant application is functionally equivalent to the storing function described in Rom. Rom discloses a system where the user optionally selects or changes garment characteristics if available. Such characteristics could include but are not limited to the size of the garment, the color of the garment and the fabric of the garment (column 6, lines 62-65). This is equivalent to the immediate application's description of an electronic closet, which permits the shopper to change the size and color of an article (Page 9 of 14 of the Instant Invention).

Accordingly, it would have been obvious to one of ordinary skill in the art to have modified the system of Rom to have included the limitations of Dodd because garments can also be fitted for someone other than the user, which is a particular advantage when buying garments for persons who have difficulty selecting their own garments, such as children (column 2, lines 5-10).

Referring to claims 2 and 7. Rose in view of Dudd discloses a method and arrangement according to claims 1 and 6 as indicated. Rose further discloses a method wherein the partial data sets include a size code (Figure 1, Data about the user body).

Referring to claim 3. Rose in view of Dudd discloses a method and arrangement according to claim 1. Rose further discloses a method wherein the partial data sets include a code identifying a style (Figure 1, Data about garment).

**Claim 8 is rejected under 35 U.S.C. 103(a) as being anticipated by Rom U.S. Patent No. 6,307,568 in view of Dodd U.S. Patent No. 6,321,211, in further view of Official Notice.**

Referring to claim 8. Rose in view of Dudd discloses an arrangement according to claim 6 as indicated supra. Rose in view of Dudd does not expressly disclose an arrangement configured and arranged to limit a maximum amount of storage space in the memory storage device provided for the on-line viewer. Examiner takes official notice that a memory storage device having a maximum limit to accessible storage space is an inherent component of a memory storage device, and does not substantially distinguish the claimed invention. Accordingly, it would have been obvious to one of ordinary skill in the art to have modified the system of Rose and Dodd to have includes a maximum limit in order to enhance services and easy shopping for customers while increasing efficiency (Rose: at least column 1, line 65 to column 2, line 2).

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

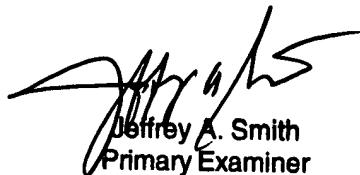
***Conclusion***

Any inquiry concerning this communication should be directed to Matthew Gart whose telephone number is 703-305-5355. This examiner can normally be reached Monday-Friday, 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

MSG



Jeffrey A. Smith  
Primary Examiner

November 20, 2003